

**United States Department of the Interior
U.S. Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021
Telephone: (602) 242-0210 FAX: (602) 242-2513**

AESO/SE

March 31, 2004

Dear Interested Party:

We are sending you this letter to offer our assistance in helping you to comply with section 7 of the Endangered Species Act (Act) of 1973, as amended, during emergency events such as wildland fire. The Act's section 7 regulations (50 CFR 402.05) provide for emergency consultations during "situations involving acts of God, disasters, casualties, national defense or security emergencies, etc." During any emergency situation, our primary objective is to provide recommendations for minimizing adverse effects to listed species without impeding response efforts. During emergency events, *protecting human life must come first every time*. Consequently, we will not recommend measures for protection of listed species or their critical habitat if these constraints place human lives in danger.

This letter is intended to clarify when you need to enter into section 7 consultation, and how the consultation process affects the ability to respond to emergency events. There is no need to consult on the emergency itself. Wildfire is considered an emergency. Consequently, consultation is conducted on the agency response to the emergency, and is handled in an expedited manner.

Typically, the Federal action agency contacts the U.S. Fish and Wildlife Service (FWS) by telephone if an emergency event is determined to be in proximity to listed species or critical habitat. This contact can be by telephone to the Arizona Ecological Services Office in Phoenix, or the suboffice (Flagstaff or Tucson) that handles your section 7 consultations. If you do not know the appropriate contact, please use the numbers we have provided at the end of this letter. *You should not delay your response to the emergency for this contact*. The contact should be as soon as possible, after responding to the emergency. Upon contact, you will be provided an emergency consultation number by FWS. At that time, please provide us with as much detail as possible about the location and severity of the emergency and your response. Subsequent calls to FWS can add or update information as appropriate. If your agency distributes news releases on the emergency, please include us on your distribution list. If you have specific information regarding impacts to listed species or their habitats, please provide this information to us. At this initial contact and throughout the emergency response, we will provide recommendations that can be implemented to avoid or minimize impacts to listed species and their habitats.

As soon as practical after the emergency event is under control, we recommend that you initiate formal consultation if you determine that listed species and/or critical habitat have been adversely affected. We recognize that take of listed species is sometimes unavoidable. If you

determine that take of a listed species is necessary to control a fire, save lives or property, and ensure that field crews can safely and effectively do their job, then we strongly recommend that you respond appropriately to the emergency and contact FWS as soon as possible to discuss take of listed species that may have occurred. If incidental take of a listed species occurs during the emergency event, we will provide an incidental take statement for your emergency actions in a biological opinion developed at a later date. Because the incidental take statement is after-the-fact, reasonable and prudent measures are not included in the biological opinion. However, the biological opinion will contain an evaluation of whether and how our recommendations were incorporated during the emergency. It is important to note that “take” resulting from the emergency itself is not attributable to the Federal action agency. Rather, incidental take by the Federal agency would only occur as a result of the response to the emergency.

Although emergency response is addressed by emergency consultation procedures as described above, in some cases the program by which emergencies are handled could be the subject of programmatic consultation. Some agencies have initiated programmatic consultation on their anticipated emergency fire suppression activities. If you have not already initiated this process, we would like to discuss with you developing programmatic consultations for fire suppression and potentially other activities. Such consultation may reduce or eliminate the need for you to contact us and consult on each and every emergency response that may affect listed species or critical habitat.

We are also currently working with many of our Federal partners to provide technical assistance, coordination, and, in some instances, section 7 consultation for proactive projects to reduce the potential for emergency events (e.g., wildland urban interface fuels treatments). If you have similar projects, we would like to assist you in overall planning activities and collectively discuss and develop information that you can relay to managers on species conservation needs. These efforts may require a commitment of staff time to initiate and complete, but ultimately will result in time savings by reducing or eliminating the need for consultation on a project-by-project basis.

For any fire suppression activity, we recommend you consider implementing the following measures. We stress that firefighter and public safety is the first priority in every fire management activity. We also recognize that you must set priorities among protecting human communities and community infrastructure, other property and improvements, and natural and cultural resources based on the values to be protected, human health and safety, and costs of protection. However, if these measures can be implemented, effects to listed species and their habitats will often be much reduced. We may recommend additional measures, or modifications of the measures below, during emergency consultation.

1. All personnel on the fire should be informed about listed species and the importance of protecting their habitats and minimizing take. This is best identified in the incident objectives.

2. Resource Advisors are designated to coordinate natural resource concerns including listed species and other resources. Aspects could include: identify protective measures endorsed by the Incident Commander; survey prospective campsites, aircraft landing and fueling sites; and perform other duties necessary to ensure adverse effects to listed species and their habitats are minimized. Resource Advisors and monitors should be on call at all times during the fire season.
3. Whenever possible, crew camps, equipment staging areas, and aircraft landing and fueling areas should be located outside of listed species habitats, and preferably in locations that are previously disturbed. If camps must be located in listed species habitat, the Resource Advisor should be consulted to ensure habitat damage and other effects to listed species are minimized and documented.
4. The effectiveness of suppression activities and listed species mitigation measures should be evaluated after a fire. Procedures should be revised as needed.
5. Burned area emergency rehabilitation (BAER) activities should be consulted on independently unless these activities are truly considered emergency actions. We encourage monitoring the effectiveness of these actions after major fires.

We look forward to working with you in your planning activities and responses to any emergency situations, thereby helping to conserve species. If you have any questions, please contact Brenda Smith of our Flagstaff Suboffice at (928) 226-0614 (x 101), Brian Wooldridge of our Tucson Suboffice at (520) 670-6150 (x 235), or Debra Bills of our Phoenix office at (602) 242-3910.

Sincerely,

/s/ Steven L. Spangle
Field Supervisor

cc: Regional Director, U.S. Fish and Wildlife Service, Albuquerque, NM
Assistant Field Supervisor, U.S. Fish and Wildlife Service, Phoenix, AZ
Assistant Field Supervisor, U.S. Fish and Wildlife Service, Tucson, AZ
Field Supervisor, U.S. Fish and Wildlife Service, Albuquerque, NM
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